

1 Colin R. Kass (*pro hac vice*)
2 PROSKAUER ROSE LLP
3 1001 Pennsylvania, Ave., N.W.
4 Washington, D.C. 20004
(202) 416-6890
ckass@proskauer.com

5 David A. Munkittrick (*pro hac vice*)
6 PROSKAUER ROSE LLP
7 Eleven Times Square
8 New York, New York 10036
(212) 969-3000
dmunkittric@proskauer.com

9 *Attorneys for Defendant Bright Data Ltd.*
10 *Additional counsel listed on signature page*

11 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

12 X. Corp.,

13 Plaintiff,

14 Case No. 3:23-CV-03698-WHA

15 v.
16 BRIGHT DATA LTD.

Hon. William H. Alsup
Courtroom 12 – 19th Floor
April 11, 2024, 1:30 p.m.

17 Defendant.

18 **BRIGHT DATA'S SECOND STATEMENT OF RECENT DECISION**

19 In the two weeks since Bright Data filed its last Statement of Recent Decision (ECF 76),
20 there have been two more diversity cases applying *Shopify* to global or internet service providers.
21 Exs. 1, 2. In its opposition to Bright Data's Motion for Interlocutory Appeal, X argued district
22 courts have uniformly applied *Shopify* in such cases. But if the Court is keeping score, the tally
23 is now 5 to 1 in favor of no personal jurisdiction over such web-based platforms. This
24 demonstrates, unequivocally, a distinct difference of opinion.

1 A. ***Zarif v. Hwareh.com, Inc. (“Healthwarehouse.com”), 2024 WL 1268167 (S.D.***
 2 ***Cal. Mar. 25, 2024).***

3 In *Healthwarehouse.com*, the defendant allegedly installed a Facebook Pixel into its
 4 website that tracked website visitors’ behavior and collected consumers’ personal medical
 5 information. The defendant was a Delaware corporation based in Missouri, did business
 6 “throughout the United States,” was licensed in California as a non-resident pharmacy, marketed
 7 its products directly to California consumers, shipped goods into California, partnered with a
 8 California medical provider, contracted for the use of California-based servers, and nominated a
 9 California resident to its Board of Directors. 2024 WL 1268167, at *1. Despite all these contacts,
 10 the court found jurisdiction lacking, following *Briskin v. Shopify*’s two-part framework.

11 The court first “applie[d] *Briskin*” to “narrow[] Defendant’s alleged forum contacts to
 12 those sharing a nexus with [its] website and browser tracking activity.” *Healthwarehouse.com*,
 13 at *4. In doing so, it excluded from consideration “Defendant’s license as a non-resident
 14 pharmacy, Defendant’s partnership with MedLion to deliver medications, [and] Defendant’s
 15 nomination of Alan Howe to its board of directors” because such acts did not bear a sufficient
 16 “causal relationship” to plaintiffs’ privacy claims. *Id.* The court also excluded from
 17 consideration any shipping of pharmaceuticals to California residents for the same reason.

18 “Having eliminated Defendant’s non-relevant forum contacts,” the court then went on to
 19 analyze whether the remaining forum-contacts exhibit sufficient California prioritization to
 20 satisfy *Shopify*’s second prong. *Id.* The court, however, held that “direct[ing] advertising toward
 21 California residents” does not show that it expressly “aimed its ***website activities*** at the forum.”
 22 *Id.* As the court explained, there was no evidence that the “Defendant prioritized or treated the
 23 California market differently in the way it structured its business,” and – though it specifically
 24 “registered as an independent pharmacy in California” the plaintiff “fail[ed] to distinguish this
 25 registration from how Defendant operates *in every other state* or identify how Defendant
 26 specifically focused on the California pharmaceutical market.” *Id.* The court similarly rejected
 27 the argument that contracting with server farms in California demonstrated the requisite forum
 28

1 prioritization. As the court explained, the location of servers is “random” or “fortuitous” and
2 “insufficient to establish specific personal jurisdiction.” *Id.*, at *5.

3 **B. *Moore v. Carhartt, Inc., 2024 WL 1337899 (S.D. Cal. Mar. 28, 2024).***

4 In *Carhartt*, the defendant allegedly incorporated spyware into its website, “tapping and
5 recording” private information from website visitors. 2024 WL 1337899, at *1. Applying the
6 second prong of *Shopify*, the court concluded that personal jurisdiction was lacking because the
7 website operated the same way everywhere, and was “accessible from anywhere.” *Id.*, at *3. “It
8 is not relevant,” the court explained, that the plaintiff “resided in California, accessed Defendant’s
9 website while in California, and sustained his privacy-based injuries in California” because the
10 allegations “do not indicate that California was the focal point of the privacy intrusive and data
11 collection activity.” *Id.*, at *2. Nor was it relevant that the defendant used “its website to direct
12 California customers to order products for shipping to California.” *Id.*, at *3.

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1 Dated: April 3, 2024
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Respectfully submitted,

3 /s/ Colin R. Kass
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Colin R. Kass*
PROSKAUER ROSE LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 416-6890
ckass@proskauer.com

7 David A. Munkittrick*
8 PROSKAUER ROSE LLP
9 Eleven Times Square
New York, New York 10036
10 (212) 969-3000
dmunkittrick@proskauer.com

11 Robert C. Goodman (Bar No. 111554)
12 Lauren Kramer Sujeeth (Bar No. 259821)
13 ROGERS JOSEPH O'DONNELL, PC
311 California Street, 10th Floor
14 San Francisco, CA 94104
(415) 956-2828
rgoodman@rjo.com
lsujeeth@rjo.com

16 Sehreen Ladak (Bar No. 307895)
17 PROSKAUER ROSE LLP
18 2029 Century Park East, Suite 2400
19 Los Angeles, CA 90067-3010
(310) 284-5652
sladak@proskauer.com

20 *Attorneys for Defendant Bright Data Ltd.*
21 *Admitted pro hac vice